



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/157853

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed May 21, 2014, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on June 12, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly discontinued Kinship Care payments to the Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Tracy Pachowitz, Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On February 25, 2014, the agency conducted a home visit with the Petitioner as part of her annual reassessment for Kinship Care (KC). As a result of the visit, the agency issued a notice to the Petitioner on April 2, 2014 informing her that it was discontinuing her KC payments because it

had determined the living arrangement is not in the best interests of her two grandchildren. The notice contained information about the Petitioner's right to appeal the agency determination.

3. The Petitioner filed an appeal by mailing a request for a hearing to the agency rather than to DHA. The Petitioner's appeal letter to the agency was within the time limits for filing an appeal. The agency returned the appeal to the Petitioner and contacted her by phone to advise of the proper address for filing an appeal.
4. On May 21, 2014, the Petitioner mailed her appeal to DHA. The appeal was received by DHA on May 23, 2014.

## **DISCUSSION**

### *A. Timeliness of Petitioner's Appeal*

Wisconsin Administrative Code, Chapter HA (Hearings and Appeals) sets forth the procedure for fair hearings.

An agency must inform a person, in writing and at the time the agency takes action under HA 3.03 (including termination of Kinship Care payments), of the person's right to a hearing and procedures for requesting a hearing as set forth in HA 3.05. Wis. Admin. Code § HA 3.04.

A request for a hearing may be made in writing or orally and may be made to the agency or to DHA. An oral request to the agency shall be reduced to writing by the agency and signed by the petitioner. An agency receiving a hearing request shall immediately date-stamp the request and forward it to DHA. Wis. Admin. Code § HA 3.05(2)(a). (Emphasis added).

The Kinship Care agency is governed by the regulations set forth in Wis. Admin. Code Chapter DCF 58.

If an agency discontinues a kinship care payment, the agency shall notify the kinship care relative in writing of its decision and the reasons for the decision, and shall include in the notice information about the right to appeal or request a review of that decision under sub. (2). Wis. Admin. Code § DCF 58.08(1)(a).

"The due process clause prohibits unintelligible, confusing, or misleading notices, or any notices which do not meaningfully inform clients of their hearing rights." Dotson v. Duffy, 732 F.Supp. 857, at 872-73 (N.D.Ill.1988)(Citing with approval, Goldberg v. Kelly, (citation omitted here)).

The agency's notice in this case is defective and inadequate to meet minimum due process requirements. The notice's language regarding appeal rights is not in accord with the language of DCF 58 or HA 3 with regard to the appeal deadline, making it confusing and therefore defective. The notice does not contain sufficient language regarding the procedure for appeal. Specifically, the notice does not give the address for filing an appeal with DHA. The notice does indicate that an attached form can be used for the individual's convenience in filing an appeal. The agency did not present a copy of that form and did not allege that it actually sent that form to the Petitioner so I cannot conclude whether the notice, along with that form, complies with requirements to provide adequate and minimum due process notice of the right to an appeal. However, I note that the agency's notice also contains inaccurate statutory citations regarding the reasons for the agency action. Generally, it is an inadequate notice and therefore does not pass due process requirements.

I also note that the Petitioner sent her appeal to the only address noted in the letter. When it received the appeal, the agency was required to date-stamp it and forward it to DHA, not return it to the Petitioner. The agency could not provide any information when it received the Petitioner's appeal.

Based on the evidence, I conclude that the agency has not demonstrated that it provided adequate notice to the Petitioner. I also conclude, based on the evidence, that the Petitioner's appeal was received by the agency within 45 days of the date of the notice and is, therefore, timely.

*B. Agency Determination that the Living Arrangement is not in the Best Interest of the Children*

The Petitioner resides in the upper half of a duplex. The doors to the upper and lower levels of the duplex are side-by-side. The agency worker testified that one of the children opened the door to the upper level staircase for her and when she entered the door, she noted a strong odor of marijuana. The Petitioner's friend SS met the agency worker on the staircase and asked her to wait outside until she got the Petitioner up from sleeping. The agency worker noted, when she went upstairs a few minutes later, there was a can of air freshener in the kitchen.

The Petitioner and SS testified that they have no knowledge of anyone smoking marijuana in the upper level that day. The Petitioner concedes that she smokes cigarettes. She also testified that she has previously detected the odor of marijuana from the lower level of the duplex. She stated that she did not detect an odor of marijuana the day of the worker's visit.

I conclude there is insufficient evidence to support the agency's assertion that this living arrangement with the Petitioner is not in the children's best interest. The agency's case is based on one person stating she detected a smell of marijuana. There is no other evidence presented of marijuana use by the Petitioner or anyone in the Petitioner's apartment. The presence of air freshener in a kitchen does not demonstrate marijuana use in the home. Without additional evidence of marijuana use in the home and how such use would make the placement not in the children's best interest, I cannot affirm the agency's decision.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal was timely.

The agency did not present sufficient evidence to demonstrate that it properly terminated the Petitioner's Kinship care payments based on the living arrangement not being in the children's best interests.

**THEREFORE, it is**

**ORDERED**

That this matter is remanded to the agency to take all administrative steps necessary to rescind the notice of April 2, 2014 to the Petitioner and to continue to take all steps necessary to complete the Petitioner's annual reassessment. The agency shall issue any Kinship Care payments to the Petitioner that were not issued due to the agency's action on April 2, 2014. These actions shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 23rd day of June, 2014

---

\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 23, 2014.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care